

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	Chapter 11
)	
CIRCUIT CITY STORES, INC., <i>et al.</i> , Debtors.)	Case No. 08-35653-KRH
)	
TREMOR MEDIA, INC., Movant,)	Jointly Administered
v.)	Hearing Date: April 14, 2009 at 10:00 a.m.
)	
CIRCUIT CITY STORES, INC., Respondent.)	Objection Deadline: April 7, 2009
)	

**APPLICATION FOR THE ALLOWANCE AND PAYMENT OF THE
PRIORITY ADMINISTRATIVE EXPENSE CLAIM OF TREMOR MEDIA, INC.**

Tremor Media, Inc. ("Tremor Media"), by and through undersigned counsel, hereby files this application (the "Application") and moves the Court, pursuant to 11 U.S.C. § 503, for entry of an order allowing an administrative priority expense claim (the "Administrative Expense Claim") for services provided to Circuit City Stores, Inc. (the "Debtor") post-petition. In support of this Application, Tremor Media respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2) and venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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Counsel for Tremor Media, Inc.

BACKGROUND

2. Tremor Media is the leading online video advertising network providing advertisers with both in-banner and in-stream video advertising opportunities on over 1,400 top-tier publisher sites with more than 135 million unique visitors per month.

3. Tremor Media and the Debtor had a long-standing relationship whereby Tremor Media provided online advertising services for the Debtor.

4. The Debtor would purchase online advertising from Tremor Media by submitting written requests ("Insertion Orders") for such advertising, which terms were typically governed by the Internet Advertising Bureau's Standard Terms and Conditions for Internet Advertising, Version 2.0.

5. The Debtor was billed for its advertising on a "pay per click" basis. In other words (and as is customary in the industry) the Debtor paid Tremor Media an agreed amount each time an internet user "clicked" on one of the Debtor's online advertisements. The amount charged per click is commonly referred to as the "Cost Per Click" or "CPC".

6. On November 10, 2008 (the "Petition Date"), the Debtor commenced the above-captioned bankruptcy case by filing a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

7. The Debtor is operating as a Debtor in Possession pursuant to 11 U.S.C. § 1107.

8. Subsequent to the Petition Date, and pursuant to the ordinary course of dealings between the parties, the Debtor engaged Tremor Media to provide online internet advertising (the "Advertising") by submitting Insertion Orders for such Advertising to Tremor Media.

9. Tremor Media provided the requested Advertising pursuant to the Insertion Orders received from the Debtor, and billed the Debtor for such Advertising according to the agreed Cost Per Click (CPC), as provided in the Insertion Orders.

10. Specifically, Tremor Media provided and billed the Debtor for \$341,926.50 worth of

Advertising in December, 2008 and \$78,321.75 worth of Advertising in January, 2009, for a total of \$420,248.25. True and correct copies of the relevant invoices and Insertion Orders are attached hereto as Exhibit "A".

11. To date, the Debtor has not paid for such post-petition Advertising in the amount of \$420,248.25.

RELIEF REQUESTED AND BASIS THEREFORE

12. Tremor Media hereby requests that the Court allow its claim with administrative expense priority in the amount of \$420,248.25 for unpaid post-petition Advertising.

13. 11 U.S.C. § 503 permits the allowance of claims with administrative expense priority. Section 503(a) provides that "[a]n entity may timely file a request for payment of an administrative expense[.]" 11 U.S.C. § 503(a).

14. 11 U.S.C. § 503(b) provides that an administrative expense claim must be: (a) an actual, necessary cost and expense of preserving the estate; which was (b) rendered after the commencement of the bankruptcy.

15. The Advertising was an actual, necessary cost and expense of preserving the estate. Specifically, Tremor Media provided the Advertising to the Debtor, at the request of the Debtor, and the Advertising provided a benefit to the Debtor's estate. See Devan v. Simon DeBartolo Group, L.P. (In re Merry-Go-Round Enters., Inc.), 180 F.3d 149, 157 (4th Cir. 1999).

16. The Advertising was provided to the Debtor after the Petition Date.

17. As the Advertising was (a) an actual, necessary cost and expense of preserving the estate; which was (b) rendered after the commencement of the bankruptcy, it should be allowed and paid as an 11 U.S.C. § 503(b) administrative priority claim.

WAIVER OF MEMORANDUM OF LAW

18. Because this motion presents no novel issues of law and the authorities relied upon by Tremor Media are set forth herein, Tremor Media respectfully avers that no separate brief is necessary pursuant to Local Rule 9013-1(G).

CONCLUSION

WHEREFORE, Tremor Media, Inc. respectfully requests that the Court enter an Order, substantially in the form attached hereto: (a) allowing Tremor Media, Inc. a claim in the amount of \$420,248.25, with administrative expense priority and (b) granting such other relief as the Court deems just and proper.

Dated: March 13, 2009.

TREMOR MEDIA, INC.

By: 

Dennis T. Lewandowski, Esq.
Kaufman & Canoles
a professional corporation
150 W. Main Street, Suite 2100
Norfolk, VA 23510
Phone: (757) 624-3252
Fax: (757) 624-3169

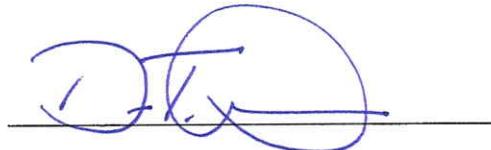
-and-

John G. Loughnane, Esq.
Eckert Seamans Cherin & Mellott, LLC
One International Place, 18th Floor
Boston, MA 02110
Phone: (617) 342-3885
Fax: (617) 342-6899

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Application for the Allowance and Payment of the Priority Administrative Expense Claim of Tremor Media, Inc. was mailed first-class, postage prepaid U.S. Mail, this 13th day of March, 2009, to the parties listed on Schedule 1 and sent via electronic mail to all creditors and parties-in-interest who are included in the Bankruptcy Court's ECF e-mail notification system.



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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	Chapter 11
)	
CIRCUIT CITY STORES, INC., <i>et al.</i> , Debtors.)	Case No. 08-35653-KRH
)	
TREMOR MEDIA, INC., Movant,)	Jointly Administered
v.)	
)	
CIRCUIT CITY STORES, INC., Respondent.)	

**ORDER GRANTING THE ALLOWANCE AND PAYMENT OF THE
ADMINISTRATIVE EXPENSE CLAIM OF TREMOR MEDIA, INC.**

This matter having come before the Court on the Application for Allowance and Payment of the Priority Administrative Expense Claim of Tremor Media, Inc. (the "Application"); and it appearing that notice of the Application was good and sufficient under the particular circumstances and that no other or further notice need be given; and the Court having considered the Application, and any Responses thereto; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby:

ORDERED that Tremor Media, Inc. has an allowed priority administrative claim in the amount of \$420,248.25.

Dated: _____, 2009

United States Bankruptcy Judge

Dennis T. Lewandowski, Esq. (VSB No. 22232)
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Counsel for Tremor Media, Inc.



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Date	12/31/2008
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Bill From:

Tremor Media, Inc.
122 W 26th Street. 8th Fl
New York NY 10001

Bill To:

Circuit City
Attn: Danielle Duncan
9954 Mayland Drive
Richmond VA 23233

AR Contact: Lenny Pentaya/Alex Vogt

Phone # (646) 278-2031

Fax # (646) 224-8474

Email ar@tremormedia.com

CIRCUIT CITY
9950 MARYLAND DRIVE
RICHMOND, VA 23223

Order Date: 10/20/08 Order Number: 00358
Activity Date: 12/01/08 - 12/31/08
Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 01208 - DIRECT DISPLAY: DECEMBER 2008

* INSERCTION ORDER *

Section:
Address: TRSHOR MEDIA
LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001
Ad Server:

Run Dates	Ad Unit	Size	Format	Target	Measurement	Type	Rate	Total Cost
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12/01/08-12/31/08	BANNER	728X90	TRSHOR DECEMBER: DISMEMBER CAMPAIGN RUNS 11/30/08-1/3/09	600,000	CLICK	.25 CPC	\$150,000.00	N
12/01/08-12/31/08	BANNER	728X90	TRSHOR DEC BONUS: DECEMBER CAMPAIGN RUNS 11/30/08-1/3/09	30,000	CLICK	.00 CPC	\$0.00	N

TOTALS:

630,000	.24 CPC	\$150,000.00	N
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1. Please sign and fax back to: 804.418.8107, attn: Danielle Duncan
2. Please remit invoices to: Circuit City Stores, Inc. 9954 Maryland Drive, Richmond, VA 23223 attn: Danielle Duncan
3. Either party may cancel this agreement at any time within two (2) business days advance written notice
4. Circuit City will only be responsible for payment of media delivered through the date of termination
5. Circuit City uses TruEffect and/or Pointroll 1st party ad-serving and will accept no more than a 10% discrepancy between reported and billed impressions. In the event of a dispute, all pertinent information will be made available upon request
6. As Circuit City is placing multiple campaigns,

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CIRCUIT CITY
9950 MARYLAND DRIVE
RICHMOND, VA 23233

Order Date: 10/20/08 Order Number: 00358
Activity Date: 12/01/08 - 12/31/08
Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 01208 - DIRECT DISPLAY, DECEMBER 2008

INJECTION ORDER

Site: TREMOR MEDIA
Section:
Address: TREMOR MEDIA
LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK
NY 10001
Ad Server:

Page 2

Run Dates	Ad Unit	Size	Format	Target	Measurement	Type	Rate	Total Cost
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Please label invoices with corresponding campaign
name, which is indicated above

7. Any advertising network shall sign and adhere
to Circuit City's Network Compliance Memo during
the course of this campaign
8. This IO is governed by The Internet Advertising
Bureau's Standard Terms and Conditions for
Internet Advertising, Version 2.0

Authorized by agency
Issued by DANIELLE DUNCAN

Authorized Vendor Signature
per

Signature: *Andrew Clark*
Andrew Clark, Agent for Tractor Supply, Inc.
Chief Operating Officer
Date: 10/20/08

10/20/08
2-13-08

CIRCUIT CITY
9950 MARYLAND DRIVE
RICHMOND, VA 23233

Order Date: 10/20/08 Order Number: 00358
Activity Date: 12/01/08 - 12/31/08

INSRIPTION ORDER

Site: TERROR MEDIA
Section:
Address: TERROR MEDIA
LARRY SHENDER

Page 3

22 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

3/3 10/2010

CIRCUIT CITY
9950 MARYLAND DRIVE
RICHMOND, VA 23233

Order Date: 11/21/08 Order Number: 00409

Activity Date: 12/01/08 - 12/31/08

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 01208 - DIRECT DISPLAY: DECEMBER 2008

Site: TRIMOR MEDIA
Section:
Address: TRIMOR MEDIA
LARRY SHERMER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK, NY 10001

Ad Server:

Run Dates	Ad Unit	Size	Format	Target	Type	Measurement	Rate	Total Cost	Page
12/01/08-12/31/08	BANNER	728X90	DECEMBER ADDITION	400,000	CLICK	.25 CPC	\$100,000.00	N	
12/01/08-12/31/08	BANNER	128X90	DECEMBER ADDITION	11/29 - 1/3	20,000	CLICK	CPC	\$0.00	N

TOTALS:

420,000

.24 CPC

\$100,000.00

N

1. Sign and fax back to Julie Borill
804-418-8107
2. Remit invoices to Circuit City Stores, Inc
9954 Maryland Drive, Richmond, VA 23233
attn: Julie Borill
3. Either party may cancel this agreement at any
time with two business days advance written
notice.
4. Circuit City will be responsible for payment
for media delivered through the date of
termination only.
5. Circuit City uses TruthEffect and/or Pointroll ad-
serving and will accept no more than a 10%
discrepancy between reported and billed
impressions. In the event of a dispute, all
pertinent information will be made available
upon request.

CIRCUIT CITY
9950 MARYLAND DRIVE
RICHMOND, VA 23233

Order Date: 11/21/08 Order Number: 00409

Activity Date: 12/01/08 - 12/31/08

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 01208 - DIRECT DISPLAY: DECEMBER 2008

* INSERTION ORDER *

Page 2

Site: TREMOR MEDIA
Section:

Address: TREMOR MEDIA
LARRY SHNEIDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

Ad Server:

Run Dates	Ad. Unit	Size	Format	Target	Type	Measurement	Rate	Total cost
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6. As Circuit City is placing multiple campaigns, please label invoices with corresponding name as indicated above
7. Any advertising network shall sign and adhere to Circuit City's Network Compliance memo during the course of this campaign
8. This IO is governed by the Internet Advertising Bureau's Standard Terms and Conditions for Internet Advertising, version 2.0

Authorized vendor signature
per
Marylin

Authorized by Agency
Issued By *WANTZ-FUSCAN*

Marylin

CIRCUIT CITY
9950 MARYLAND DRIVE
RICHMOND, VA 23233

Activity Date: 12/05/08 - 12/11/08 Case Number: 00422

Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Rate/Unit: \$1200 - PERIOD 8:00PM-11:00PM

Volume 1, Number 12, December 2008

***** INSPECTION ORDER *****
***** *****
Site: TREMOR MEDIA
Section: Page 2

Address: TREMOR MEDICA
LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK NY 10001

6. Run Dates Ad Unit Size Points

7. As Circuit City is placing multiple campaigns, please label the invoices with the corresponding campaign name as indicated above.

8. Any advertising network shall sign and adhere to Circuit City's Network Compliance Memo.

9. This IO is governed by the Internet Advertising Bureau's Standard Terms and Conditions for Internet Advertising, version 2.0.

Authorized Vendor Signature
Per

Signature: Andrew Faso, President for Transor Media, Inc.
Title: Chief Operating Officer
Date: 6-15-08

Authorized by Agency
Issued By JULIE BORILL

De 2
2025.4



Invoice	565
Date	1/22/2009
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Bill From:

Tremor Media, Inc.
122 W 26th Street, 8th Fl
New York NY 10001

Bill To:

Circuit City
Attn: Danielle Duncan
9954 Mayland Drive
Richmond VA 23233

Insertion Order #	Customer ID	Salesperson ID	Billing Period	Terms	Due Date			
AS04010	TM00032	LS	January 2009	Net 30	2/21/2009			
Start Date	End Date	Description			UOM	Qty	Unit Price	Ext. Price
1/1/2009	1/12/2009	Circuit City 728 Jan Expanding Flash Banner (CPC)			CPC	313,287.00	\$0.25000	\$78,321.75

AR Contact:	Lenny Pentaya/Alex Vogt
Phone #	(646) 278-2031
Fax #	(646) 224-8474
Email	20-5480343

Total \$78,321.75

CIRCUIT CITY
9950 MAINLAND DRIVE
RICHMOND, VA 23233

Order Date: 12/22/08 Order Number: 00424
Activity Date: 01/04/09 - 01/31/09
Advertiser: CIRCUIT CITY STORES
Product: DIRECT DISPLAY/CONTENT
Estimate: 00109 - DIRECT DISPLAY: JANUARY 2009

Site: TREMOR MEDIA
Section: TREMOR MEDIA
Address: TREMOR MEDIA
LARRY SHENDER
122 W. 26TH STREET, 8TH FLOOR
NEW YORK, NY 10001

Ad Server:

Run Dates	Ad Unit	Size	Format	Target	Type	Measurement	Rate	Total Cost
01/04/09-01/31/09	BANNER	728x90	JANUARY RICH MEDIA	1,000,000	CLICK		.25 CPC	\$250,000.00
			EXPANDABLE BANNER					

01/04/09-01/31/09	BANNER	728x90	JANUARY RICH MEDIA	50,000	CLICK		CPC	\$0.00
			EXPANDABLE BANNER BONUS CLICKS					

TOTALS: 1,050,000

.24 CPC \$250,000.00 N

1. Sign and return to julie_borill@circuitcity.com or Fax to 804.418.8107
2. Remit invoices to Circuit City Stores, Inc. 9954 Maryland Drive, Richmond, VA 23233 attn: Julie Borill
3. Either Party may cancel this agreement at any time with 2 business days advance written notice
4. Circuit City will only be responsible for payment of media delivered through the date of termination
5. Circuit City uses TrueEffect and/or Pointroll ad serving and will accept no more than a 10% discrepancy between reported and billed impressions
6. As Circuit City is placing multiple campaigns please label invoices with corresponding campaign name as indicated above

AS04010

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